

January 6, 2009

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L07P0010**
Proposed Ordinance No. **2008-0591**

DELANEY PARK
Preliminary Plat Application

Location: West side of 148th Avenue Southeast and approximately 160 feet south
of Southeast 120th Street

Applicant: Rick Burnstead Construction Company
represented by **Matt Hough**
CPH Consultants
733 Seventh Avenue, Suite 100
Kirkland, Washington 98033
Telephone: (425) 2875-2390

King County: Department of Development and Environmental Services (DDES)
represented by **Kimberly Claussen**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7167
Facsimile: (206) 296-7051

SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approve, subject to conditions (modified)

EXAMINER PROCEEDINGS:

Hearing Opened:	December 16, 2008
Hearing Closed:	December 16, 2008

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES AND TOPICS ADDRESSED:

Road improvements; school bus loading area

SUMMARY:

Subdivision of 27 lots on 8.81 acres in the urban area is approved, subject to conditions.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer:	Rick Burnstead Construction Company 11980 Northeast 24th St., Suite 200 Bellevue, WA 98005 425-454-1900
Engineer:	CPH Consultants 733 Seventh Avenue, Suite 100 Kirkland, Washington 98033 (425) 2875-2390
STR:	10-23-05
Location:	The site is located on the west side of 148th Ave SE and approximately 160-feet south of SE 120th St. Postal City Renton
Zoning:	R-4
Acreage:	8.81-acres
Number of Lots:	27
Density:	Approximately 3 units per acre
Lot Size:	Ranges from approximately 4,700 to 7,000-square feet in size
Proposed Use:	Single Family Detached Dwellings
Sewage Disposal:	City of Renton
Water Supply:	King County Water District No. 90
Fire District:	King County Fire District No. 10/Eastside Fire & Rescue
School District:	Issaquah
Date Application Filed:	July 24, 2007
Complete Application Date:	August 20, 2007

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's (LUSD) preliminary report to the King County Hearing Examiner for the December 16, 2008, public hearing are found to be correct and are incorporated herein by this reference. The LUSD staff recommends approval of the application, subject to conditions.

3. The proposed development is subject to the requirements of the 2005 King County Surface Water Design Manual.
4. The Issaquah School District has requested that a school bus loading pad be constructed on 148th Avenue Southeast, to provide increased safety for students who will travel to and from school by bus. The applicant has agreed to construct the loading pad in the vicinity of the intersection of the new sub-access street with 148th Avenue Southeast. This improvement is conceptually shown on the applicant's preliminary site plan.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, subdivision and zoning codes, and other official land use controls and policies of King County.
2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare, and for open spaces, drainage ways, streets, other public ways, transit stops, potable water supply, sanitary waste, parks and recreation, playgrounds, schools and school grounds and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable and proportionate requirements necessary to mitigate the impacts of the development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as required for final plat approval or as shown on the revised preliminary plat submitted by the Applicant on September 29, 2008, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.
5. The applicant's proposal to construct the access road with a driving width of 36 feet curb to curb, to allow for parking on both sides of the street without the necessity for installation of sprinklers in the residences to be constructed in this plat, exceeds the minimum requirements of the King County Road Standards for a sub-access street. Final engineering plans could provide for less width of the roadway, consistent with the King County Road Standards, if the applicant agrees to meet the alternative requirements of the King County Fire Marshal (e.g., sprinklers or parking restrictions).
6. Although the City of Renton has requested that road improvements meet city standards, this application is subject to the King County Road Standards. King County does not have the authority to require that improvements meet City of Renton standards.
7. The applicant should be required to construct the school bus stop loading pad as requested by the Issaquah School District, in order to reasonably provide for the safety of students who will be bused from this development to and from Issaquah schools.

DECISION:

The proposed plat of Delaney Park, as revised and received on September 29, 2008, is granted preliminary approval, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19A of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication that includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-4 zone classification. All lots shall meet the minimum dimensional requirements of the R-4 zone classification or shall be shown on the face of the approved preliminary plat, whichever is larger, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environment Services.

Any/all plat boundary discrepancy shall be resolved to the satisfaction of DDES prior to the submittal of the final plat documents. As used in this condition, "discrepancy" is a boundary hiatus, an overlapping boundary or a physical appurtenance which indicates an encroachment, lines of possession or a conflict of title.

4. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 15753 (2007 KCRDCS)
5. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.

Any future residences constructed within this subdivision are required to be sprinklered NFPA 13D unless the requirement is removed by the King County Fire Marshal or his/her designee. The Fire Code requires all portions of the exterior walls of structures to be within 150 feet (as a person would walk via an approved route around the building) from a minimum 20-foot wide, unobstructed driving surface that is not over 150 feet in length if dead-end. Vehicles parked on roadway surfaces or within the cul-de-sac are an obstruction.

To qualify for removal of the sprinkler requirement the curb-to-curb driving surface of the roadway within the proposed subdivision has to have a minimum curb-to-curb width of 36 feet if parking is permitted on both sides of the roadway; or 28 feet if parking is allowed on only one side. The driving surfaces of Tracts C and D must also be a minimum of 20 feet in width. Additionally, the fire hydrant requirements outlined below must be met.

A separate permit is required for the installation of water mains and/or fire hydrants. Submit three (3) copies of drawings and specifications to DDES Building Services Division Permit Service Center for a permit application. Review and approval by Fire Engineering Section is required prior to installation. Plans shall include, but are not limited to; pipe sizes, pipe type, valves/fittings, thrust blocks and/or rodding and material listings. Fire hydrants shall be installed per K.C.C. Title 17. Water mains shall be installed and tested per AWWA standards and/or NFPA#24 (STANDARDS FOR PRIVATE FIRE HYDRANTS AND WATERMAINS); as applicable Ref. 1001.4 UFC

6. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in K.C.C. 9.04 and the Surface Water Design Manual (SWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 2005 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
7. The drainage facilities shall meet the requirements of the 2005 King County Surface Water Design Manual (KCSWDM). The drainage design shall meet at a minimum the Conservation Flow Control and Basic Water Quality Treatment requirements in the KCSWDM.
8. To implement the required Best Management Practices (BMP's) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.
9. The 100-year floodplain for any onsite streams or wetlands shall be shown on the engineering plans and the final plat per Special Requirement 2 of the KCSWDM.
10. The following road improvements are required to be constructed according to the 2007 King County Road Design and Construction Standards (KCRDCS):
 - a. The internal access road (Road A) shall be improved at a minimum to the urban subaccess street standard; with a temporary cul-de-sac at the northerly end, unless otherwise approved by DDES. Note that the applicant is proposing a 36 feet wide road vs. the minimum required 24 feet wide subaccess road. The applicant's proposed road width in excess of the minimum required by the King County Road Standards is a voluntary proposal, which may be modified by the applicant during the final engineering plan review, provided that the minimum requirements of the King County Road

Standards are met and any alternative requirements of the King County Fire Marshal are implemented.

- b. FRONTAGE: The frontage along 148th Ave SE (west side) shall be improved at a minimum to the urban arterial collector standard. This improvement shall meet the Street requirements in Section 4.03 of the KCRDCS.

In addition to the frontage improvement, a road lowering improvement is required to achieve sight distance along 148th Ave SE in general compliance with the Stopping Sight Distance Plan received Sept. 28th, 2008. The road lowering is on 148th Ave SE from the Road A intersection to approximately 330 feet south.

- c. Paired curb ramps shall be provided at the Road A/ 148th Ave SE intersection per Section 3.05 of the KCRDCS.
 - d. A school bus loading pad will be provided as conceptually shown on the preliminary site plan (sheet 1 of 7) to accommodate the request contained in the Issaquah School District letter dated 1/8/07.
 - e. Modifications to the above road conditions may be considered according to the variance provisions in Section 1.12 of the KCRDCS.
- 11. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
 - 12. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at the final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 - 13. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to the recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 - 14. There shall be no direct vehicular access to or from 148th Ave SE from those lots which abut it. A note to this effect shall appear on the engineering plans and the final plat.
 - 15. The proposed subdivision shall comply with the Critical Areas Code as outlined in K.C.C. 21A.24. Permanent survey marking and signs as specified in K.C.C. 21A.24.160 shall also be addressed prior to final plat approval. Temporary marking of sensitive areas and their buffers (e.g., with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.

16. Preliminary plat review has identified the following specific requirements which apply to this project. All other applicable requirements from K.C.C. 21A.24 shall also be addressed by the applicant.

Wetlands

- a. Wetland A is a Category III wetland and shall have a 75 foot buffer as measured from the wetland edge.
- b. Wetlands B, is a Category III wetland and shall have a 75 foot buffer as measured from the wetland edge.
- c. Wetlands C, is a Category III wetland and shall have a 75 foot buffer as measured from the wetland edge.
- d. Wetlands D, is a Category IV wetland and shall have a 50 foot buffer as measured from the wetland edge.
- e. The buffers for Wetlands C and D maybe modified as proposed on the preliminary plat map dated September 8, 2008.
- f. All wetlands and their buffer shall be placed in a Critical Areas Tracts (CAT) as shown on the preliminary plat map dated September 8, 2008 for long term protection.
- g. A 15' building set back line is required from the edge of Critical Area Tracts and shall be shown on all affected lots.
- h. Prior to construction activities the CAT boundary shall be clearly marked with both bright orange construction and erosion control fencing. The fencing shall remain in place until all construction activities are complete.
- i. Prior to plat recording the applicant shall delineate the boundary between the adjoining property and CATs using iron or concrete markers as established by current survey standards. The applicant shall also identify the CAT boundary with permanent signs and fencing along adjacent lots and/or recreation tracts. The permanent fence shall be Cedar split-railed or similar and no more than four feet in height.
- j. Engineering plans shall be routed to the Critical Areas Section for review and approval of the above conditions.
- k. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR CRITICAL AREA TRACTS AND CRITICAL
AREAS AND BUFFERS**

Dedication of a critical area tract/critical area and buffer conveys to the public a beneficial interest in the land within the tract/critical area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The critical area tract/critical area and buffer imposes upon all present and future owners and occupiers of

the land subject to the tract/critical area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/critical area and buffer. The vegetation within the tract/critical area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/critical area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the critical area tract/critical area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the critical area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

17. Suitable recreation space shall be provided consistent with the requirements of K.C.C. 21A.14.180 and K.C.C. 21A. 14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.).
 - a. A detailed recreation space plan (i.e., location, area calculations, dimensions, landscape specs, equipment specs, etc.) shall be submitted for review and approval by DDES and King County Parks prior to or concurrent with the submittal of engineering plans.
 - b. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
18. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation, open space and/or sensitive area tract(s).
19. Street trees shall be provided as follows (per KCRDCS 5.03 and K.C.C. 21A.16.050):
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along all roads. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 2007 KCRDCS unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
 - c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the county has adopted a maintenance program. Ownership and maintenance shall be noted on the face of the final recorded plat.

- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
 - f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
 - g. The applicant shall contact Metro Service Planning at (206) 684-1622 to determine if 148th Ave SE is on a bus route. If so, the street tree plan shall also be reviewed by Metro.
 - h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.
20. To implement K.C.C. 16.82.156 which applies to the site, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention plan (and engineering plans) shall be consistent with the requirements of K.C.C. 16.82.156. No clearing of the subject property is permitted until the final tree retention plan is approved by LUSD. Flagging and temporary fencing of trees to be retained shall be provided, consistent with K.C.C. 16.82.156. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except for grading work permitted pursuant to K.C.C. 16.82.156.

A note shall be placed on the final plat indicating that the trees shown to be retained on the tree retention plan shall be maintained by the future owners of the proposed lots, consistent with K.C.C. (Note that the tree retention plan shall be included as part of the final engineering plans for the subject plat.)

ORDERED this 6th day of January, 2009.

James N. O'Connor
King County Hearing Examiner *pro tem*

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before January 20, 2009***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before January 27, 2009***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE DECEMBER 16, 2008, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L07P0010.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Kimberly Claussen and Bruce Whittaker representing the Department and Matt Hough representing the Applicant.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Department of Development and Environmental Services (DDES) file no. L07P0010
- Exhibit No. 2 DDES Preliminary Report, dated December 16, 2008
- Exhibit No. 3 Application for Land Use Permits received July 24, 2007
- Exhibit No. 4 State Environmental Policy Act (SEPA) checklist received July 24, 2007
- Exhibit No. 5 SEPA Determination of Non-Significance issued October 17, 2008
- Exhibit No. 6 Affidavit of Posting indicating a posting date of August 29, 2007, received by DDES on August 30, 2007
- Exhibit No. 7 Preliminary Plat map, revised September 25, 2008, received September 29, 2008
- Exhibit No. 8 King County Assessor maps: SW 11-23-05, dated March 17, 2006; NW 11-23-05, dated January 26, 2007; SE 10-23-05, dated April 11, 2006; NE 10-23-05, dated June 26, 2007
- Exhibit No. 9 Level 1 Offsite Analysis dated July 20, 2007
- Exhibit No. 10 December 17, 2007 Revised Level 1 Offsite Analysis
- Exhibit No. 11 Wetland and Wildlife Assessment dated July 19, 2007
- Exhibit No. 12 Addendum to Wetland and Wildlife Assessment dated December 13, 2007
- Exhibit No. 13 January 31, 2008 Addendum to Wetland and Wildlife Assessment
- Exhibit No. 14 Traffic Impact Analysis dated July 17, 2007
- Exhibit No. 15 December 18, 2007 Supplement to Traffic Impact Analysis
- Exhibit No. 16 Preliminary Grading and Drainage plan revised January 29, 2008
- Exhibit No. 17a Gregg Zimmerman, City of Renton, letter regarding applicable road standards for proposed plat, dated September 28, 2007
- Exhibit No. 17b Gregg Zimmerman, City of Renton, letter regarding SEPA decision, dated October 28, 2008
- Exhibit No. 18 Public comments of Claudia Donnelly regarding downstream (from proposed plat) flooding, received November 6, 2008
- Exhibit No. 19 Entering Sight Distance plan, revised September 25, 2008
- Exhibit No. 20 School Walk map dated July 20, 2007